



The Charlotte-Mecklenburg Hospital Authority

Office of General Counsel
704 355-3063
Fax 704 355-6330

June 1, 2011

Marvin A. Bethune, Esq.
Ruff, Bond, Cobb, Wade & Bethune, L.L.P.
831 E. Morehead Street, Suite 860
Charlotte, NC 28202

Dear Marvin:

I am writing this letter to clarify several issues that have recently been a source of dispute between our clients. I will be glad to discuss these in greater detail with you, but I believe it is important to identify the issues clearly and state Carolinas HealthCare System's position.

First, representatives of the County have continually mischaracterized Carolinas HealthCare System's responsiveness to information requests. In 2008, Grayce Crockett, on behalf of Mecklenburg County Area Mental Health ("AMH"), discussed with Carolinas HealthCare System ways to facilitate transferring data required by the State of North Carolina from AMH as the local management entity ("LME"). On July 9, 2009, Ms. Crockett installed a County employee on site at CMC-Randolph to enter charge and demographic data. In the summer of 2010, the on-site County employee was reassigned to Mecklenburg Open Door, and no replacement was installed. The County simply stopped collecting the demographic data that the County employee had previously been entering into the State's integrated payment and reporting system ("IPRS").

In March 2011, County staff met with staff of Carolinas HealthCare System and requested an electronic interface that would upload IPRS data elements to the LME server. County staff explained that they were unable to submit data to the State because the County had not been collecting certain data elements since the County employee was transferred in the summer of 2010. County staff and Carolinas HealthCare staff have been working together since March to implement a file upload process that will provide transfer of charge and demographic data for the State's IPRS. The upload process for patient demographic and charge data files became operational as of May 26, 2011, with initial catch-up data uploads through May 13, 2011. Another catch-up file upload covering the period May 14 through May 31, 2011, is scheduled for June 1, 2011. Thereafter, Carolinas HealthCare System plans to upload patient demographic data files daily beginning June 2, 2011, and to upload charge data files weekly beginning June 6, 2011.

Carolinas HealthCare System has repeatedly explained to representatives of the County that we were working diligently to effect the system interface requested by the County and that we would address other information requests as promptly as possible. Given that the County staff is well aware of this history, and has directed Carolinas HealthCare System to make the IPRS information the top priority, it seems disingenuous for the County to allege that Carolinas HealthCare System has been delinquent in responding to information requests.

Second, although the original request from County staff in March 2011 related to the IPRS and patient demographic and charge data, subsequent requests for utilization information are not related to IPRS reports to the State. For example, in your email to me dated Friday, May 27, 2011, you attached an April 27, 2011, email from Carlos Hernandez to Laura Thomas in which Mr. Hernandez asks for utilization information. Mr. Hernandez fails to cite the basis for his request under the Restated Consolidated Shared Programs Joint Undertaking Agreement dated November 2, 2000 ("Joint Undertaking Agreement"), although you reference Section III.D of the Joint Undertaking Agreement in your email to me. Under Section III.D of the Joint Undertaking Agreement, "[i]n accordance with applicable federal and State law, and to the extent not addressed by accreditation agencies or other governmental bodies (i.e. DFS), AMH, with the cooperation of CHS, *may review*" certain areas, including utilization, "in accordance with applicable federal and State law and to the extent the information remains protected as thereby described" (emphasis added). Section III.D of the Joint Undertaking Agreement does not require that Carolinas HealthCare System provide copies of documents to AMH; rather, the Joint Undertaking Agreement provides that AMH, with the cooperation of CHS and in accordance with applicable laws, may review certain areas. In accordance with the terms of the Joint Undertaking Agreement, Carolinas HealthCare System will cooperate with the County so that the County may review utilization. We are in the process of determining how best to afford Mr. Hernandez the opportunity to review utilization information not restricted by patient privacy laws or other applicable laws.

Third, I want you to be aware that Sandra Bisanar attended the meeting last Thursday, May 26, 2011, between representatives of Carolinas HealthCare System and County Manager Jones, County Commission Chairman Jennifer Roberts and County Commission Vice Chairman Jim Pendergraph. My client was not told in advance that the County would be represented at the meeting by counsel, and therefore did not have the benefit of also being represented by counsel at the meeting. In the future, please let me know in advance if counsel for the County will be present at a scheduled meeting between the County and Carolinas HealthCare System.

Fourth, in a letter from Mr. Jones to Michael Tarwater dated May 25, 2011 (copy enclosed), Mr. Jones references a return of certain funds to the County from Carolinas HealthCare System as noted in a letter from Michael Tarwater to County Manager Jones dated April 4, 2011 (copy enclosed). The reference to providing a rebate to the County in an amount of \$1.1 million was made as part of a larger, multi-element proposal that Mr. Jones rejected in his letter to Michael Tarwater dated April 19, 2011 (copy enclosed). The rebate proposal was tied to the other elements described in Mr. Tarwater's letter of April 4, including the continuation of the arrangements as set forth in the Joint Undertaking Agreement over the next 10 years. Mr. Jones rejected Mr. Tarwater's proposal and has indicated that Mr. Jones recommends eliminating indigent care funding and funding for comprehensive inpatient and outpatient mental health services. Consequently, because of the County's rejection of Mr. Tarwater's offer, Carolinas HealthCare System will not be returning to the County \$1.1 million in funds paid by the County to Carolinas HealthCare System from the indigent care pool for services provided in the fiscal year ending June 30, 2011.

Fifth, despite the County's apparent belief that funding the indigent care pool is discretionary, under Section II.C of the Joint Undertaking Agreement, the County has a contractual obligation to maintain funding of the indigent care pool at \$17.7 million.

Finally, in light of Mr. Jones proposing a budget that is inconsistent with the County's obligations under the Joint Undertaking Agreement, my client has asked that all requests from the County for information under the Joint Undertaking Agreement be processed through me. Please direct to me in writing any future requests from the County for information under the Joint Undertaking Agreement, and include a citation to the section of the Joint Undertaking Agreement serving as the basis of the request.

Please let me know if you would like to discuss any of the above issues.

Sincerely,



Keith A. Smith
Senior Vice President and General Counsel

KAS/j

Attachments



MECKLENBURG COUNTY
Office of the County Manager

May 25, 2011

Mr. Michael Tarwater
Chief Executive Officer
Carolinas Healthcare System
P.O. Box 32861
Charlotte, NC 28232-2861

Dear Mike:

I am writing to follow-up in writing regarding my recommended budget. As we discussed by telephone on May 17 my budget recommendation is as follows:

- A. My recommended budget for FY 2012 eliminates the indigent care pool in its entirety;
- B. My recommended budget for FY 2012 will hold funding flat for the Behavioral Health Center (CMC-Randolph);
- C. My recommended budget for FY 2012 will provide funding for Public Health in the manner called for in the current agreement.

I want to acknowledge and thank you for your April 4 offer to permanently change the indigent policy in a manner that would save the County \$7.7 million for FY 2012, however as I shared in my budget remarks, I do not believe this goes far enough.

Additionally, I am also recommending that we phase out the County's subsidy for Carolinas HealthCare System's operation of the Behavioral Health Center. The recommended budget maintains the current year's funding level for this subsidy, but proposes to phase out this funding over three years. I am suggesting a Blue Ribbon Committee to develop a phase-out transition plan for Board consideration by February 2012. Ideally, it would be great for this community if we could get both CHS and Presbyterian/Novant to collaborate on an approach for providing in-patient mental health services.

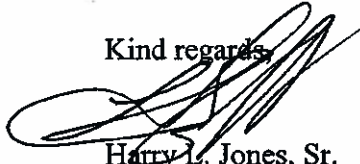
My recommendation does not address the rebatement noted in your April 4 letter from the indigent pool, however I would anticipate the return of these funds by July 15, 2011 as you have outlined, which would have a positive effect on the County fund balance for FY 2012.

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As I have shared with you numerous times over the past several months, the longstanding, mutually beneficial relationship between our two organizations is one that I am immensely proud of. Please let me know if you have any questions or concerns.

Kind regards,



Harry L. Jones, Sr.
County Manager

Cc: Michelle Lancaster
Marvin Bethune
Keith Smith



Carolinus HealthCare System

CONFIDENTIAL

April 4, 2011

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and Board of Advisors*

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*Michael C. Tarwater, FACHE
Chief Executive Officer*

**Mr. Harry L. Jones, Sr., County Manager
County Manager's Office
Charlotte-Mecklenburg Government Center
600 East 4th Street, 11th Floor
Charlotte, North Carolina 28202**

Dear Harry:

In follow-up to our meeting on Monday, March 28th, I am providing for your feedback and consideration major changes to the existing contractual terms between Carolinus HealthCare System and Mecklenburg County under the Interlocal Agreement. We have tried to address the County's needs and issues that you have communicated to us and, at the same time, preserve the benefits and synergies of the long standing partnership arrangement between our respective organizations which provides critical services to our community.

At a high level, our proposal is as follows:

- 1. Indigent Care Services and Funding.** The current Interlocal Agreement calls for a funding flow of \$17.7 million to the indigent care pool. For the 2011 year, at your request, we agreed to a reduction of \$1 million or a 2011 total pool of \$16.7 million. Prior to the recession, the contractual funding had been increased in 2008 to \$20.5 million in recognition of the increasing volumes experienced by, and expanded services provided by, the CMC outpatient primary care clinics. As the local economy deteriorated, the funding level was agreed to be reduced in 2009 by \$2.1 million and an additional \$700,000 in 2010. Notwithstanding the funding reductions, we did not reduce service levels.

For 2012 and beyond, we are proposing that the County fund the 2011 projected operating deficits for the CHS primary care outpatient clinics only. In addition, we recommend the County permanently stop providing any other indigent care funding for other outpatient, emergency room or inpatient services. This would be a change from the over 60 year history of

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the covering a portion of all hospital indigent care costs. The County's current indigent care funding and coverage policy follows the Human Services recommendation of first dollar coverage for the CMC outpatient primary care clinics. Due to the difficult economy and to provide long-term value to the County, we are recommending this to be the new permanent policy.

Thus the financial benefit to the County for 2012 would be as follows (dollars in millions):

Floor Level	\$17.7
2011 Concession	<u>\$ 1.0</u>
	\$16.7
CMC Outpatient Clinics	<u>\$ 9.0</u>
Reduction	<u>\$ 7.7</u>

Of the 2012 \$7.7 million reduction, \$1.2 million would be from Novant and \$6.5 million from CHS. Going forward from 2012, the base would be reset to \$9 million with annual increases thereafter equal to the annual medical care services CPI rate. Historically, and over recent years, the outpatient clinics' deficits have grown at a much higher rate than the Medical CPI.

In addition, we are recommending a rebatement in indigent care funding for the FY ending June 30, 2011, of \$1.1 million to be returned to the County by July 15, 2011.

2. **Public Health.** We are not recommending any changes to the existing terms except to shorten the notice requirements from the County to CHS for any services reductions. Two Commissioners requested this in the past and we have essentially been working under shorter notices than the December 31 contractual notices for service reduction. Language was agreed to between CHS and County staff several years ago but never formally adopted.
3. **Mental Health.** For Mental Health we are proposing a limit to County obligation for funding of future deficit increases by limiting the County's exposure to the 2011 level of \$ 22.4 million plus the medical care services CPI for the 12 months ended the previous December 31. In addition, we commit to be \$1.3 million better than budget for FY 2011, which will be returned to the County in FY 2012, per contract. This ceiling on the County's funding for future obligations accomplishes the following:
 - a. Reduces future County funding levels below actual deficits expected and converts to a capped payment model.

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- b. Provides relative certainty on future funding increases prior to the County's annual budget process.
- c. Allows CHS to more easily integrate the CMC-Randolph physician component with the larger CHS physician and outpatient operations that are being planned to better coordinate these services with the intent of reducing demand for and utilization of more expensive inpatient services. This is supported by the New Heights report.
- d. Allows actions by CHS in managing CMC-Randolph and the new psychiatric facility (described below) without having to formulate and estimate the impact on CMC-Randolph deficits since the County's ongoing participation in such deficits will be capped. This should solve the County's concern regarding the new hospital's impact on future CMC-Randolph deficits.

The proposed change for Mental Health would result in a projected savings to the County over the next five years of over \$13 million assuming a medical CPI rate of 3% per year and the deficits increase at the projected levels in the CHS long-term financial forecast.

In addition, CHS will fund all capital of \$24.5 million and absorb all the losses on the planned new 44 bed psychiatric hospital to open in mid-2013, and losses for any additional beds added in the future. Operating losses for the new hospital are estimated to be \$3.8 million per year.

We commend the County staff from not implementing the 1915 Medicaid waiver due to the financial risk we both identified. The capped proposal herein is conditioned on Mecklenburg County LME not implementing the waiver. If the LME does implement the waiver or a similar waiver, then the funding would need to revert to the current arrangement until we have a few years under the waiver to determine the impact of the reduced funding, which could be material.

In summary, these proposed changes to the indigent care, public health and mental health arrangements, in the aggregate, over the next 10 years are projected to provide a reduction in County obligations under the current Interlocal Agreement funding levels of over \$135 million. This includes the \$8.7 million per year reduction in indigent care funding and for Mental Health it assumes a 3% medical CPI versus actual expected increases of 6%. It does not include any of the capital or operating loss funding for the new psychiatric hospital that CHS desires to build and operate at our expense.

For FY 2012, the reductions include a total of \$10.1 million compared to FY 2011 spending levels as follows (dollars in millions):

Harry L. Jones, Sr.
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Indigent Care 2012	\$ 7.7 million
Indigent Care 2011 Rebatement	\$ 1.1 million
Mental Health 2011 Reduced Deficit	<u>\$ 1.3 million</u>
	<u>\$10.1 million</u>

Please let me know your reaction to these major commitments, concessions and accommodations. I have not run this by the leadership of our Board, but would need to do that soon if it is the route that the County wants to take. We view this proposal as another investment in the time tested and forward looking partnership whereby the County and CHS have shared in responsibility for enhancing the level of health care available to all of fellow citizens and neighbors. I hope you will find these changes meaningful and substantial. I am also hopeful this will allow you to provide funding for other County priorities as well as work through the challenges of the current economy.

Harry, with the upcoming meetings planned with the County Commissioners to review the inpatient psychiatric bed needs on April 19, and our desire to file the CON in Mecklenburg County for the new hospital by May 15, it is important that we try to come to an agreement on the overall relationship so this does not distract us from the need to provide additional inpatient psychiatric capacity.

Best regards,



Michael C. Tarwater
Chief Executive Officer

cc: Joe Piemont
Michelle Lancaster-Sandlin



MECKLENBURG COUNTY
Office of the County Manager

April 19, 2011

Mr. Michael Tarwater
Chief Executive Officer
Carolinas Healthcare System
P.O. Box 32861
Charlotte, NC 28232-2861

Dear Mike:

I am writing to follow-up on your letter of April 4, 2011 and the conversations we have had over the past month regarding the County's financial relationship with Carolinas HealthCare System. I want to thank you for your recently submitted budget proposal which includes a reduction in FY 2012 of \$10.1 million. As we discussed in our March 21, 2011 meeting, my proposal is as follows:

- A. My recommended budget for FY 2012 will stay the same as funding for FY 2011 for Public Health.
- B. My recommended budget for FY 2012 will hold funding for the Indigent Care Pool at \$17.7 million. This funding will be allocated in accordance with the formula approved by the Board of Commissioners in 1994.
- C. My recommended budget will eliminate County funding for comprehensive inpatient and outpatient Mental Health Services associated with the Behavioral Health facility (CMC-Randolph). This is a reduction of \$19.7 million in County funding.
- D. I will also recommend either transferring title or entering into a long-term lease with respect to the Behavioral Health facility to CHS (at no rental cost to CHS).

The operation of hospitals and the provision of direct patient care are not core services of Mecklenburg County. The role of Mecklenburg County in the provision of mental health services should focus on operating as a single-county, Local Management Entity (LME) overseeing a system of care for consumers and families.

CHS has been immensely successful in the business of owning and operating hospitals and healthcare facilities. CHS should now be able to manage CMC-Randolph without further funding from Mecklenburg County. CHS has provided inpatient and outpatient psychiatric services for many years as an integral part of Carolinas Medical Center. CHS also operates mental health services at other of its owned, managed or operated hospitals. In my judgment, CHS offers patients the best opportunity for excellent mental health services in Mecklenburg County.

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You have requested that Mecklenburg County support the CHS proposal to build additional psychiatric beds at another location in Mecklenburg County. In that regard the County has requested utilization, financial and other data in order to properly evaluate your request for support. Multiple requests for information have been made and very little of the information requested has been received to date. As I was preparing to send this letter, staff received some limited data on charges and revenues for CMC-Randolph. As this information was received just yesterday, it will take some time for staff to analyze and determine if there are other questions. It is critical that we receive all financial and patient care data in order to evaluate the request from CHS regarding additional psychiatric beds.

I agree with you that the Interlocal Agreement should be renegotiated since the revised agreement is now 11 years old and the methodology for indigent care funding was developed in 1994.

The longstanding, mutually beneficial relationship between our two organizations is one that I am immensely proud of, and Mecklenburg County is honored to have played a significant role in the growth, development and success of CHS as one of our Country's greatest healthcare systems. It is my firm belief that this proposal is fair and equitable and will allow each of our organizations on serving the greater good of the residents of our community.

Kind regards,

Harry L. Jones, Sr.
County Manager

Cc: Michelle Lancaster
Joe Piemont